Public Prosecutor v Murugesan a/l Muniyandi

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–112 OF 2008
HASAN LAH, SULONG MATJERAIEAND SULAIMAN DAUD JJCA
12 JULY 2011

Criminal Law — Offences — Culpable homicide — Sentencing — Accused pouring boiling cooking oil onto deceased — Premeditated attack — Killing vicious and cruel — Accused pleading guilty to alternative charge of culpable homicide — Sentenced to 18 years imprisonment — Penal Code s 304(a)

Criminal Procedure — Sentencing — Principles — Accused pleading guilty to culpable homicide — Premeditated attack — Killing vicious and cruel — Whether accused should be given credit or discount for pleading guilty — Sentence of imprisonment enhanced from 11 years to 18 years upon appeal

The accused and the deceased had a quarrel resulting in the accused suffering injuries. Several hours later the accused went back to deceased's room where the deceased was sleeping. The accused then boiled cooking oil in a frying pan and poured the boiling cooking oil onto the deceased's body. The accused also hit the deceased's head with the hot frying-pan and threw curry powder to the deceased's face. The deceased died due to septicaemia caused by severe burns. The accused pleaded guilty to an alternative charge under s 304(a) of the Penal Code. After considering the plea in mitigation, the trial judge sentenced the accused 11 years imprisonment from the date of his arrest. In giving credit or discount for the accused's pleading guilty the learned trial judge relied on the accepted rule of practice that an accused should be given credit or discount for pleading guilty. The public prosecutor brought this appeal against the inadequacy of the sentence.

Held, allowing the appeal and enhancing the sentence to 18 years imprisonment from date of arrest:

(1) It is trite law that what sentence to be imposed in a given case is a matter of discretion for the sentencing court. An appellate court should not therefore intervene unless the court below has erred in principle, that is to say, it took into account irrelevant considerations or failed to take into account relevant considerations or passed a sentence that is manifestly inadequate or not permitted by law; *Public Prosecutor v Karthiselvam Vengatan* [2008] 3 MLJ 368 referred; *Yit Kean Hong v Public Prosecutor* [2005] 4 CLJ 592 referred (see para 13).

(2) It is also a principle in sentencing that the sentencing court should also look at the sentences imposed in other cases for a similar offence. It must, however, be borne in mind that no two cases can have exactly the same facts as to the minutest details and each case has to be decided on its own merits; *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 referred (see para 13).

(3) On the facts and circumstances of this case, the accused's plea of guilty did not entitle him to a reduction in the sentence because the attack had been premeditated. The killing was vicious and cruel. Public interest is paramount and violent crime affecting the human body resulting in death committed with a degree of premeditation must be met with the severest punishment provided by the law; *Public Prosecutor v Kanadasan a/l Sankaran & Anor* [2010] 1 MLJ 297 referred (see para 16).

(4) Looking at the recent decisions of the court involving similar offence, the sentence passed by the learned trial judge was manifestly inadequate having regard to the facts and circumstances of the case. The learned trial judge failed to have sufficient regard to public interest when determining the measure of sentence imposed (see para 26).

[Bahasa Malaysia summary

Tertuduh dan si mati telah bergaduh yang mana menyebabkan tertuduh mengalami kecederaan. Beberapa jam kemudian tertuduh telah pergi semula ke bilik si mati di mana si mati sedang tidur. Tertuduh kemudiannya mendidihkan minyak masak di dalam kuali dan mencurahkan minyak masak yang mendidih tersebut ke badan si mati. Tertuduh juga telah memukul kepala si mati dengan kuali panas dan membaling serbuk kari ke muka si mati. Si mati telah meninggal dunia disebabkan kesan melecur yang teruk. Tertuduh mengaku bersalah untuk tuduhan alternatif di bawah s 304(a) Keseksaan Jenayah. Selepas mempertimbangkan rayuan meringankan hukuman, hakim perbicaraan telah menjatuhkan hukuman 11 tahun penjara terhadap tertuduh dari tarikh dia ditangkap. Dalam memberikan pengurangan untuk akuan bersalah tertuduh hakim perbicaraan yang bijaksana bersandarkan kepada kaedah yang diamalkan yang diterima bahawa tertuduh seharusnya diberikan pengurangan untuk akuan bersalah. Pendakwaraya telah membuat rayuan terhadap hukuman yang tidak mencukupi.

Diputuskan, membenarkan rayuan dan menambahkan hukuman kepada 18 tahun penjara dari tarikh tangkap:

(1) Adalah undang-undang nyata bahawa hukuman yang dikenakan dalam sesuatu kes adalah perkara budi bicara untuk mahkamah yang membuat hukuman. Suatu mahkamah rayuan oleh itu tidak seharusnya campur tangan melainkan mahkamah bawahan telah terkhilaf dalam prinsip, yakni, ia telah mengambil kira pertimbangan tidak relevan atau gagal

untuk mengambil kira pertimbangan yang relevan atau telah memberikan hukuman yang mana secara melampau tidak mencukupi atau tidak dibenarkan oleh undang-undang; *Public Prosecutor v Karthiselvam Vengatan* [2008] 3 MLJ 368 dirujuk; *Yit Kean Hong v Public Prosecutor* [2005] 4 CLJ 592 dirujuk (lihat perenggan 13).

(2) Adalah menjadi prinsip hukuman bahawa mahkamah yang memberikan hukuman juga seharusnya melihat hukuman yang dikenakan dalam kes-kes lain yang melibatkan kesalahan yang serupa. Ia haruslah, walau bagaimanapun, bahawa dua kes tidak semestinya mempunyai fakta yang sama sekali serupa berkenaan dengan butiran yang terkecil dan setiap kes hendaklah diputuskan berdasarkan meritnya yang tersendiri; *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 dirujuk (lihat perenggan 13).

(3) Melihat kepada fakta dan keadaan kes ini, akuan bersalah tertuduh tidak memberikan hak kepadanya untuk pengurangan hukuman oleh kerana serangan tersebut adalah terdahulunya dirancang. Pembunuhan tersebut adalah ganas dan kejam. Faedah orang awam adalah penting dan jenayah kejam yang melibatkan badan manusia yang menyebabkan kematian dengan tahap perancangan hendaklah dikenakan dengan hukuman yang paling berat yang diperuntukkan oleh undang-undang; *Public Prosecutor v Kanadasan a/l Sankaran & Anor* [2010] 1 MLJ 297 dirujuk (lihat perenggan 16).

(4) Melihatkan kepada keputusan-keputusan terbaru yang melibatkan kesalahan yang serupa, hukuman yang dikenakan oleh hakim bicara yang bijaksana adalah tidak mencukupi dengan melihat kepada fakta dan keadaan kes tersebut. Hakim perbicaraan yang bijaksana telah gagal untuk memberi perhatian yang mencukupi terhadap faedah orang awam apabila menentukan ukuran hukuman yang dikenakan (lihat perenggan 26).]

Notes

For cases on culpable homicide, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1407–1411.

For cases on principles of sentencing, see 5(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4623–4660.

Cases referred to

Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534; [2004] 2 CLJ 572, CA (refd)

Che Hasan bin Senawi v PP [2009] 1 MLJ 55; [2008] 5 CLJ 769, CA (refd)

Kesavan a/l Baskaran v PP [2008] 6 MLJ 384; [2008] 6 CLJ 390, CA (refd)

Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167, SC (refd)

PP v Kanadasan a/l Sankaran & Anor [2010] 1 MLJ 297; [2010] 1 CLJ 596 (refd)
PP v Karthiselvam Vengatan [2011] 4 MLJ 212; [2009] 4 CLJ 632, CA (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45, HC (refd)
Ralon bin Banas v PP [2003] 3 MLJ 241; [2003] 3 AMR 2671, CA (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134; [1975] 1 LNS 158, FC (refd)
Yit Kean Hong v PP [2005] 4 CLJ 592, CA (refd)

Legislation referred to
Penal Code ss 302, 304, 304(a)

Appeal from: Criminal Trial No 45–35 of 2006 (High Court, Johor Bahru)

Munahyza bt Mustafa (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Respondent in person.

Hasan Lah JCA:

[1] This is an appeal by the public prosecutor against sentence. The respondent ('the accused'), an Indian national, was charged for the murder of one Subramaniam a/l Ganesan, also an Indian national, on 23 February 2006 at about 3am at Lot 239Y, Jalan Kampung Jawa, Batu 3 1/2, Klang, an offence under s 302 of the Penal Code. The accused claimed trial.

[2] On 14 July 2008 when this case came up for trial, the learned deputy public prosecutor tendered an alternative charge under s 304(a) of the Penal Code. The accused pleaded guilty to the alternative charge after same was read and explained to him. The High Court, accordingly, found him guilty on the alternative charge and convicted him. After considering his plea in mitigation and the facts relating to the commission of the offence, he was sentenced to 11 years imprisonment from the date of his arrest.

[3] The facts of the case are as follows. The accused was the brother-in-law of Subramaniam a/l Ganesan ('the deceased'). The deceased worked as a barber and he stayed alone in a room on the first floor of a shop premises at Lot 239Y, Batu 31/2, Kampong Jawa, Klang ('the said premises'). The accused stayed at Golden Villa, Batu 4, Kampong Jawa, Klang.

[4] On 22 February 2006 at about 11.30pm the accused had a quarrel with the deceased at the said premises. In the quarrel the accused suffered injuries to his right eyebrow and left leg. The accused left the deceased's room and went to seek for medical treatment.

[5] On 23 February 2006 at about 3am, the accused went back to deceased's room at the said premises. The deceased was sleeping at that time. The accused then boiled cooking oil in a frying pan. After the cooking oil was hot he poured the boiling cooking oil onto the deceased's body. The deceased woke up and tried to catch the accused. The accused hit the deceased's head with the hot frying-pan and threw curry powder to the deceased's face

[6] The deceased was sent to Hospital Tengku Ampuan Rahimah, Klang on 23 February 2006 at about 4.56am. He died on 1 March 2006. Post-mortem examination showed that he sustained severe burn to his face, neck, front and back part of his body, both shoulders and upper limbs. He also had burn injuries to the front of both thighs. The pattern of burn showed that it was caused by hot fluid. His cause of death was septicaemia due to severe burn.

[7] The accused was arrested by the police on 24 February 2006 at about 1.10am.

[8] The learned deputy public prosecutor submitted that the sentence of imprisonment imposed on the accused was manifestly inadequate; She submitted that the learned High Court judge had erred in not considering the facts and circumstances of the case and the public interest. It is her submission that on the facts and circumstance of this case the accused ought to be punished with the severest sentence and the accused should not be given a discount for pleading guilty.

[9] The accused's plea in mitigation before the learned High Court judge can be found at pp 61–79 of the appeal record. He was 40 years old when he was charged for this offence. He came to Malaysia in 2004 and worked as a hairdresser at Kg Jawa, Klang. He has a wife and two sons, 16 and 20 years old. He had no previous criminal record.

[10] Learned counsel for the accused urged the learned High Court judge to take into consideration the fact that the accused had pleaded guilty to the alternative judge. The accused should be given credit or discount for pleading guilty. In support of that learned counsel cited the cases of *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134; [1975] 1 LNS 158 and *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 and a few other cases.

[11] Learned counsel for the accused also tendered a table of past decided cases involving sentences imposed by various courts in this country for convictions under s 304(a) of the Penal Code before the learned High Court judge.

[12] In his judgment the learned High Court judge, inter alia, said:

Having regard to all the circumstances obtaining in this case and in the light of the established sentencing principles, if this case were to go on with the trial and if the accused person were to be found guilty by me, he would have been sentenced to about 14 years imprisonment for his crime. But he had pleaded guilty and the circumstances in this case should entitle him to some discount. The learned Chief justice (Borneo) Lee Hun Hoe in the Supreme Court case of *Sau Soo Kim*'s case had said therein that even a hardened criminal ought to be given a discount on sentence if he pleads guilty and the oft-quoted case of *Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, another Supreme Court's decision is clearly an authority for the proposition that an accused person who has pleaded guilty should be given a discount of between 25%–30% discount on the sentence which the court would have imposed on him upon finding him guilty after a full trial. At p 171 Mohamad Azmi SCJ in delivering the judgment of the Supreme Court said: 'It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one quarter and one-third of what otherwise would have been the sentence.'

These two cases have since become the bright twin guiding beacons that have helped enlighten our courts in their tasks of coming to an appropriate sentence to be imposed on prisoners appearing before them on a daily basis. Needless to say, these two cases have been resurrected time and again in our criminal courts throughout our country more often than not by defence counsel when pleading for leniency on behalf of their clients. As decisions emanating from the apex court in our country, these two decisions must be accorded the utmost respect that they richly deserve, over and above the fact that they are binding upon this court.

Under the circumstances of the case obtaining before me, I hereby order that this prisoner be imposed a term of imprisonment of 11 years (after giving him a discount of three years, from the 14 years imprisonment which I would have imposed on him if I had found him guilty after a full trial). I noted that the facts obtaining in this case could be described as showing deliberate cruelty on the part of this prisoner, but having read the *Ralon Banas* case I cannot pretend to say that the factual severity in both cases is the same. The facts in the *Ralon Banas* case can only be described as extreme. So to my mind, that sentence of 11 years against this prisoner would best serve the public interest. To me, it represents a fair and correct balance that needed to be struck between the public interest and the individual interest considerations in this case before me. That 11 years imprisonment would be sufficiently long enough for this prisoner to reflect on his senseless folly when he had poured boiling oil on the body of his brother-in-law on that fateful day, and make peace with his maker. I order that the said sentence to run with effect from his date of arrest. I also order that all exhibits, except documentary exhibits, to be forfeited and destroyed according to law.

[13] The punishment for the offence under s 304(a) of the Penal Code is an imprisonment for a term which may extend to 20 years, and shall also liable to fine. Sentencing is guided by established principles and guidelines. It is trite law that what sentence to be imposed in a given case is a matter of discretion for the sentencing court. An appellate court should not therefore intervene unless the court below has erred in principle, that is to say, it took into account irrelevant

considerations or failed to take into account relevant considerations or passed a sentence that is manifestly inadequate or not permitted by law (see *Public Prosecutor v Karthiselvam Vengatan* [2011] 4 MLJ 212; [2009] 4 CLJ 632; *Yit Kean Hong v Public Prosecutor* [2005] 4 CLJ 592). It is also a principle in sentencing that the sentencing court should also look at the sentences imposed in other cases for a similar offence. It must, however, be borne in mind that no two cases can have exactly the same facts as to the minutest details and each case has to be decided on its own merits. In *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 at p 257, Hashim Yeop Sani J (as he then was) had this to say:

> In respect of sentencing there can be only general guidelines. No two cases can have exactly the same facts to the minutest detail. Facts do differ from case to case and ultimately each case has to be decided on its own merits. In practice sentences do differ not only from case to case but also from court to court. All things being equal these variations are inevitable if only because of the human element involved. But, of course, there must be limits to permissible variations.
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> The principles to be applied in imposing sentence however are the same in every case. The High Court sitting in exercise of its revisionary powers will not normally alter the sentence unless it is satisfied that the sentence of the lower court is either manifestly inadequate or grossly excessive or illegal or otherwise not a proper sentence having regard to all the facts disclosed on the record or to all the facts which the court ought to take judicial notice of, that is to say, that the lower court clearly has erred in applying the correct principles in the assessment of the sentence. It is a firmly established practice that the court will not alter a sentence merely because it might have passed a different sentence.

[14] We deal first with the issue of whether the learned High Court judge was right in giving the reduction to the sentence passed on the accused on account of a plea of guilty. In giving credit or discount for the accused's pleading guilty the learned High Court judge relied on the accepted rule of practice that an accused should be given credit or discount for pleading guilty as stated in the oft-quoted case of *Mohamed Abdullah Ang Swee Kang*. On this issue, this court, in *Bachik Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534 at p 543; [2004] 2 CLJ 572 at pp 583 and 584, after referring to *Mohamed Abdullah Ang Swee Kang* had made the following observation:

> The position in law is that it is generally accepted that an accused person should be given credit or discount for pleading guilty (see *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134; *Public Prosecutor v Sulaiman bin Ahmad* [1993] 1 MLJ 74; *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45). The discount that is given is normally a reduction of the sentence by about a third of what would otherwise have been imposed (see *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167; [1987] 2 CLJ 405; [1987] CLJ (Rep) 209; *Public Prosecutor v Muhari bin Mohd Jani & Anor* [1999] 8 CLJ 430; *Christopher Khoo Ewe Cheng v Public Prosecutor* [1998] 3 CLJ 705). However, this is not a strict rule as the court may, in the exercise of its discretion, refuse to grant any discount in an appropriate

case (see *Zaidon Shariff v Public Prosecutor* [1996] MLJU 159; [1996] 4 CLJ 441; *Lee Say & Ors v Public Prosecutor* [1985] 2 CLJ 155; [1985] CLJ (Rep) 683). Its application in favour of an accused depends on the facts and circumstances of each case (see *Wong Kai Chuen Philip v Public Prosecutor* [1999] 1 MLJ 321). Thus, as lucidly explained by Charles JA in *Leigh Nicholas Donnelly v R* (1997) 91 A Crim R 550 at p 554:

> A court's attitude towards the fact of a plea of guilty is expected to act as an encouragement to enter such a plea.
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> The issue with which the court is to be concerned is what weight should be given to it in the circumstances.

The circumstances in which a guilty plea will not have any weight are varied. The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Loh Hock Seng & Anor v Public Prosecutor* [1980] 2 MLJ 13; *Public Prosecutor v Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands a deterrent sentence in the circumstances of a particular case, then the effect of a guilty plea must also give way (see *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR 537; *Public Prosecutor v Govindnan a/l Chinden Nair* [1998] 2 CLJ 370). A guilty plea cannot also be a powerful mitigating factor when effectively no defence to the charge is available to the accused (see *Public Prosecutor v Low Kok Wai* [1988] 3 MLJ 123; [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268). If a plea of guilty is made too late in the trial it may also cease to have mitigating effect (see *Public Prosecutor v Dato Nallakaruppan Solaimalai* [1999] MLJU 74; [1999] 2 CLJ 596). The absence of mitigating factors in favour of the accused like, for instance, the existence of previous convictions may also deprive the guilty plea of its effect. There can therefore be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment (see *Public Prosecutor v Tia Ah Leng* [2000] 3 MLJ 401; [2000] 5 CLJ 614). Be that as it may, where there is a departure from the general rule the reason for not treating the guilty plea as a mitigating factor must be reflected in the grounds of judgment (see *Tan Lay Chen v Public Prosecutor* [2001] MLJ 135; [2000] 4 CLJ 492).

[15] In the instant appeal the learned High Court judge, after stating that the facts showed that there was a deliberate cruelty on the part of the accused when committing the offence, had sentenced the accused to 11 years imprisonment after giving him a discount of three years. It is our judgment that on the facts and circumstances of this case, the accused's plea of guilty did not entitle him to a reduction in the sentence.

[16] Our reasons are these. The relevant peculiar fact of this case is that the accused poured boiling cooking oil on the deceased's body while he was sleeping. The deceased did not die immediately but he died seven days later. From the facts it is clear that the attack by the accused had been premeditated. The killing was vicious and cruel. Public interest is paramount and violent crime affecting the human body resulting in death committed with a degree of premeditation must be met with the severest punishment provided by the law.

In this connection we agree with the observation made by this court in *Public Prosecutor v Kanadasan a/l Sankaran & Anor* [2010] 1 MLJ 297 at p 308; [2010] 1 CLJ 596 at p 608:

> No one who has killed an innocent person can expect upon conviction to be dealt with other than with utmost severity. Unless there are mitigating circumstances, they can expect to be sentenced or punished with the severest allowed by law.
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> While on this subject of 'guilty plea', we would like to associate ourselves to what was said by the learned judge in *Public Prosecutor v Gunasekaran Arjunan & Anor* at p 1007. We will quote the relevant text in extenso:
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> > A plea of guilty does not automatically take away the discretion of any court to impose the maximum sentence provided for the said offence under the law. Accused and counsel should not delude themselves into thinking that a plea of guilty entitles an offender, a legal right to a sentence lesser than the maximum. Public interest is paramount and violent crimes affecting the human body resulting in death committed with a degree of premeditation, without any cause by the deceased to have such a fate fall upon him, must be met with the severest punishment provided by the law.
> >
> > The courts of justice are not market places. The word 'discount', in relation to sentences, upon a plea of guilty, should not be used indiscriminately; as it gives the impression that the accused can 'bargain' over his sentence, as one bargains over a price at a market place. The threat of inconvenience to the court by a prolonged trial and expense, in the event the court does not accede to pass a particular sentence or a lesser sentence than the maximum, upon a plea of guilty, should never prevail. The appropriate sentence in every case, whether the accused had pleaded guilty or otherwise, must be determined entirely on the peculiar facts of the case, after taking into consideration public interest, as paramount, at all times, bearing in mind current needs and demands of State, society, and individuals for realistic punishment and rehabilitation of offenders who have no respect for the law or human life.

[17] We will now deal with the trend of sentencing in other cases for a similar offence. In *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45, at p 52 Visu Sinnadurai J made the following observation:

> It therefore appears, that the practice in Malaysia and Singapore, as a general rule, is to impose an eight to ten year term of imprisonment for a similar offence: the Federal Court in *Tham Kai Yau* imposing a ten-year imprisonment where the accused had pleaded not guilty to a charge of murder and subsequently found guilty under the first limb of s 304; the Singapore High Court imposing an eight-year term of imprisonment in *Tay Chuan Beng* and a ten-year imprisonment in *Chot Saik Kam*.

[18] In his judgment the learned High Court judge referred to the case of *Ralon bin Banas v Public Prosecutor* [2000] 3 MLJ 341; [2003] 3 AMR 2671. In that case the accused person had also pleaded guilty to the reduced charge

under s 304(a) of the Penal Code for having killed the victim. The facts show that the accused had shot the victim in cold blood in front of the latter's mother, who was frantically pleading with the accused person not to kill her son. The accused had aimed his revolver at the victim and had then pulled the trigger five times, three of which hit the victim and one of which had pierced through his heart. The Court of Appeal had affirmed the sentence of 15 years imprisonment imposed on the accused by the trial court.

[19] In *Kanadasan a/l Sankaran & Anor* the Court of Appeal had made the following observation:

> It would appear to us that the trend of sentencing for offences of almost similar nature varies from 12 years to 20 years. In *Vinaga Moorthy Gopal v Public Prosecutor* [2003] 2 MLJ 87; [2003] 1 CLJ 758, the appellant was charged, convicted and sentenced for an offence under s 304 of the Penal Code and was sentenced to 12 years imprisonment. The appellant appealed against sentence alleging that it was manifestly excessive. The appeal was dismissed. In *Public Prosecutor lwn Ooi Kwang Lai* [2000] 6 MLJ 622 the accused was charged under s 304(a) of the Penal Code and had pleaded guilty. He was sentenced to 15 years imprisonment. In *Public Prosecutor v Gunasekaran Arjunan & Anor* [2003] 3 MLJ 527; [2006] 3 CLJ 1003, the first and second accused were originally charged for the offence of murder under s 302 of the Penal Code read together with s 34 of the said Code, in causing the death of one Balu a/l Subramaniam. Both the accused claimed trial to the said charge. Not dissimilar to this instant case, the prosecution tendered an alternative charge under s 304(a) of the Penal Code and both the accused pleaded guilty to the said charge. Both accused were convicted and sentenced to 20 years' imprisonment.

[20] In *Kanadasan Sankaran & Anor* the victim was slashed on his face and neck while he was sleeping by the accused with a parang. The accused was initially charged with murder under s 302 of the Penal Code but after five prosecution witnesses had given evidence, the accused pleaded guilty to the alternative charge under s 304(a) of the Penal Code. The judicial commissioner sentenced the accused to ten years imprisonment from the date of arrest. On appeal by the public prosecutor, the Court of Appeal sentenced the accused to 17 years imprisonment.

[21] In *Karthiselvam a/l Vengatan*, the accused who was originally charged under s 302 of the Penal Code pleaded guilty to a reduced charge under s 304 of the same and was sentenced to 13 years imprisonment. On appeal by the public prosecutor, the Court of Appeal enhanced the sentence to 20 years imprisonment. In his judgment Gopal Sri Ram JCA, at p 216 (MLJ) pp 635–636 (CLJ) had this to say:

> In our judgment, the sentence passed by the court below is manifestly inadequate having regard to the foregoing facts and circumstances, particularly the gruesome way in which death was caused and the absence of any truly mitigating

circumstances. It is also our respectful view that the High Court failed to have sufficient regard to the public interest when determining the measure of sentence in this case. And it cannot be over-emphasised that a sentencing court should 'strike a balance, as far as possible, between the interests of the public and the interests of the accused.' (*Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256, per Hashim Yeop A Sani). Lastly, the fact that the accused pleaded guilty appears to have influenced the court below to impose the sentence it did. However, it must always be remembered that a plea of guilty should not be taken to automatically entitle an accused to a reduction of sentence. As Karthigesu JA said in *Fu Foo Tong v Public Prosecutor* [1995] 1 SLR 448:

> It is not axiomatic that every plea of guilty 'entities', as it was contended by counsel to a discount of between one-quarter to one-third of what might otherwise be considered an appropriate sentence after a trial. A plea of guilty can be of no mitigating value, for example, when the evidence overwhelmingly supports a conviction.

It is quite apparent from the facts already set out earlier in this judgment that the evidence in this case overwhelmingly supports the conviction of the accused.

[22] In *Kesavan a/l Baskaran v Public Prosecutor* [2008] 6 MLJ 384; [2008] 6 CLJ 390 the appellant was sentenced to 14 years imprisonment by the High Court after pleading guilty under s 304(a) of the Penal Code. The facts show that the appellant who was financially strained planned to rob the victim. He enlisted the assistance of the other two accused to commit the crime. The victim was savagely beaten then tied up and placed in a sack and thrown into a pond. The appellant appealed against the sentence. The Court of Appeal dismissed his appeal and enhanced the sentence to 18 years imprisonment. In his judgment Gopal Sri Ram JCA, at p 390 (MLJ); p 397 (CLJ), said:

> Having regard to the way which the crime was planned and the most cruel and brutal fashion it was executed the appellant's plea of guilty in our judgment ought to be given no weight. In short, on the peculiar facts of this case it does not operate as a mitigating factor.

[23] In *Che Hasan bin Senawi v Public Prosecutor* [2009] 1 MLJ 55; [2008] 5 CLJ 769, the appellant was originally charged for the offence of murder under s 302 of the Penal Code. At the commencement of his trial an amended charge under s 304(a) of the Penal Code was tendered by the prosecution. The accused pleaded guilty to the amended charge. He was sentenced to 19 years imprisonment with effect from date of arrest.

[24] The facts in that case show that the victim, a lady, was on her way home when she was accosted by the appellant who was riding a motorcycle. He made advances to her which she repelled. She then ran into her home and was

pursued by the appellant who killed her with a hammer. The medical evidence shows that the victim died from a single blow to her head.

[25] The Court of Appeal dismissed the appellant's appeal and affirmed the sentence passed by the High Court. In his judgment Gopal Sri Ram JCA, at p 59 (MLJ); pp 772–773 (CLJ) said:

> Ordinarily in a case of this sort the maximum sentence of 20 years would have been imposed. It is entirely possible that the sentence of 19 years imposed reflects the intention of the learned judge to take into account the appellant's plea of guilty. In our judgment, the correct approach to be taken where the maximum or near maximum sentence is warranted is that set out in the judgment of Yong Pung How CJ in *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR 537. The learned Chief Justice of Singapore expressed a view with which we respectfully agree. This is what his honour said:
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> > The principles espoused above in *R v Tait and Bartley* (1979) 24 ALR 473 and *Bensegger v R* [1979] WAR 65 represent, in my view, the approach which should be adopted by a court towards the issue of maximum sentences. To restrict the maximum sentence to the 'worst case imaginable' would only invite an endless permutation of hypotheses. In the appellants' case, for instance, would the 'worst case imaginable' be one in which custom officers had been injured? Or would it be one in which one of the officers had been killed? Or would it be one in which an innocent bystander had been fatally hit by the appellant's car? The possibilities are limitless and the uncertainty intolerable. All that a court can realistically do — and all that it should do — when deciding whether or not to impose a maximum sentence is to identify a range of conduct which characterises the most serious instances of the offence in question. This would, as the court in *R v Tait and Bartley* pointed out, involve consideration both of the nature of the crime and of the circumstances of the criminal.

[26] It is our judgment that the sentence passed by the learned High Court judge in the instant appeal is not in line with the recent decisions of the court involving similar offence. Looking at the recent decisions mentioned earlier we find the sentence passed by the learned High Court judge was manifestly inadequate having regard to the facts and circumstances of the case. The learned High Court judge failed to have sufficient regard to public interest when determining the measure of sentence imposed.

[27] For the reasons given we allowed the appeal and enhanced the sentence to 18 years imprisonment from date of arrest.

Appeal allowed and sentence enhanced to 18 years imprisonment from date of arrest.

Reported by Kanesh Sundrum